IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 298 of 1993.

Date of Decision: 12-12-2007.

State of H.P. ……..Appellant.

Versus

Gurbux Singh and another. ……..Respondents.

Coram

Hon'ble Mr. Justice Surjit Singh, J.

Hon'ble Mr. Justice Surinder Singh, J.

Whether approved for reporting[1]? . No.

For the appellant : Mr. D. S. Nainta, Deputy Advocate General.

For respondent No.2 : Mr. N.K. Thakur, Advocate

Surjit Singh, J. (oral)

State has filed this appeal against the judgment of trial Magistrate whereby the respondents and one Hans Raj, since deceased, who were charged with and tried for offences punishable under Sections 109, 409 and 420 of the Indian Penal Code have been acquitted.

It appears from the record that 376.30 Kg. of rice was sent to the Office of the Block Development Officer Bangana for distribution to women and children under Drought Nutrition Programme in the year 1980-1981. Respondent Gurbux Singh was the Block Development Officer during those days. Delivery of rice was taken on behalf of respondent Gurbux Singh by deceased Hans Raj who was then working as Junior Engineer under him. Out of the aforesaid of 376 qtls and 30 kg rice, 100 qtls rice was to be distributed to various centers, under the charge of respondent Sudershana Kumari, who was then posted as Gram Sewika. It is alleged that a truck carrying 100 qtls of rice reached the place of work of

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Whether reporters of the Local papers are allowed to see the judgment? Yes.

respondent Sudershana Kumari. 40 qtls rice was un-loaded at that place and rest of the quantity was carried to village Sohari Takoli for being delivered to the Pradhan of the Panchayat. Allegation against respondent Sudershana Kumari is that she did not supervise the further distribution of 40 qtls of rice which she received and then distributed to Incharge of various centers for distribution to the beneficiaries. However, there is no allegation that there was any irregularity in the distribution of aforesaid 40 qtls of rice to the beneficiaries. Allegation against the other respondent, i.e. Gurbux Singh is that out of 60 qtls of rice given to the Pradhan of the Panchayat, he mis-appropriated fifteen-sixteen qtls of rice which he allegedly carried from the Store. Allegation against deceased Hans Raj was that he distributed some of the quantity of rice to the labourers in lieu of their wages. Trial Court acquitted the respondents holding that case was not proved beyond reasonable doubt. Trial Court has taken the view that the prosecution did not examine the beneficiaries to get it testified from them that the rice meant for them did not reach them and, therefore, it could not be said that there had been any mis-appropriation.

We have gone through the record and heard the learned Deputy Advocate General.

It has come in the evidence that most of the quantity of rice allegedly mis-appropriated in this case had been distributed by deceased Hans Raj to the labourers, who worked under different draught Schemes, on account of their wages. It is not the case of the prosecution that the labourers, who had worked under draught Scheme, were shown to have been paid in cash but actually they were paid in kind, by being supplied rice. Now if in lieu of cash, rice was given to the labourers, equivalent to the amount of their wages, this would be only a case of irregularity and not mis-appropriation.

As regards the allegation that some quantity of rice was carried by respondent Gurbux Singh from the custody of the Pradhan of the Panchayat, evidence on record shows that 44 qtls out of 60 qtls of rice kept with the Pradhan

had been given to Subhash Chand, Member Panchayat Swari on the asking of deceased accused Hans Raj. As regards the rest of the rice, Roshan Lal (PW24), a co-shopkeeper and brother of Nanak Chand (PW4) testified that the said quantity had been distributed to the labourers and Chwokidar Gulabi in lieu of their wages. The Audit Officer namely Shri S.R. Sharma (PW22) testified that during the course of audit, in fact, only six qtls 27 kg shortage was noticed and this shortage was also only on paper on account of mis-calculations and was not actual shortage. As regard respondent Sudershana Kumari, even allegation is not there that she mis-appropriated any quantity of rice in question.

In view of the above said position, we see no reason to interfere with the judgment of acquittal passed by the trial Court. The appeal is dismissed.

(Surjit Singh)
Judge.

(Surinder Singh)
Judge.

December 12, 2007.

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